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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962.

No. 905

EDWARD ABERNATHY, et al.,
Appellants,

vs.

MILTON CARPENTER, Director of Revenue for the State of Missouri,
Appellee.

On Appeal from a Decision of a Three Judge Court of the United States District Court for the Western District of Missouri, Central Division.

JURISDICTIONAL STATEMENT.

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On Appeal from a Decision of a Three Judge Court of the United States District Court for the Western District of Missouri, Central Division.

JURISDICTIONAL STATEMENT.

This is an appeal from an Order entered September 14, 1962 by a Three Judge Court in the United States District Court for the Western District of Missouri, Central Division, wherein said Court dismissed Plaintiff's Complaint. This statement is submitted to show that the Supreme Court of the United States has jurisdiction of the appeal.

OPINION BELOW.

The opinion of the United States District Court for the Western District of Missouri, Central Division, is reported in 208 F. S. 793, a copy of which is attached hereto as Appendix A.

JURISDICTION.

This is an appeal from a final order of a Three Judge Court in the United States District Court for the Western District of Missouri, Central Division, dismissing Plaintiffs' Amended Class Complaint for Declaratory Judgment and Injunction brought by the Plaintiffs pursuant to 28 U. S. C. A. 2281. Judgment was entered by the District Court on September 14, 1962. The Notice of Appeal was filed in the District Court on the 12th day of October, 1962 and an Order extending the time in which to file the record on appeal and have the Appeal docketed in this Court was entered, continuing said time to March 8, 1963. This Order was entered on February 1, 1963.

The jurisdiction of the Supreme Court to hear this appeal rests upon 28 U .S. C. A., Section 1253.

Jurisdiction of this appeal is sustained by Query v. U. S., 1942, 62 S. Ct. 1112, 316 U. S. 486; Radio Corporation of America v. U. S., 1950, 71 S. Ct. 806, 341 U. S. 412; Palmetto Fire Insurance Company v. Connecticut (1926), 47 S. Ct. 88, 272 U. S. 295.

STATUTES INVOLVED.

The Second Section of Article Four of the United States Constitution provides "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states" and the First Section of the Fourteenth Amendment to the Constitution of the United States provides that "Nor shall any state deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws." 28 U. S. C. 2281 provides that a Three Judge District Court shall have jurisdiction where a state

statute is alleged to be violative of the Constitution of the United States. 28 U. S. C. 1253 provides that an appeal from such a Three Judge Court shall be directly to the Supreme Court of the United States. 28 U. S. C. 1331 provides that the District Court shall have jurisdiction where the matter in controversy exceeds Ten Thousand ($10,000.00) exclusive of interests and costs. 28 U. S. C. 1343 (3) provides that the District Court shall have jurisdiction where the action commenced is to redress the deprivation of any right, privilege or immunity secured by the Constitution of the United States.

The pertinent provisions of the Missouri State Income Tax, V. A. M. S. 1949, Chapter 143.00 et seq. is set forth in Appendix B.

QUESTIONS PRESENTED.

The Appellants sought to have the Missouri Income Tax Law, cited above, declared unconstitutional and the State Director of Revenue enjoined from collecting said tax or assessing or collecting any interest or penalties for the non-payment of said tax from the Appellants. The District Court denied its jurisdiction and dismissed the Plaintiffs' Complaint. Therefore, the following questions are presented to this Court:

(1) Whether or not the Missouri State Director of Revenue, by virtue of a state income tax statute, can solely on the basis of non-residency:

(a) Levy an income tax and penalty on the amount permitted a non-resident state taxpayer as dependency exemptions for the taxpayer, spouse and children because of failure to file a timely tax return while permitting a resident taxpayer who has so failed to file a return to have such exemptions;

(b) Invoke and use criminal sanctions to enforce such a non-resident penalty provision as stated above;

2. Whether or not the non-resident taxpayers as stated in Questions 1 (a) and (b) above are denied "equal protection of the law" and "due process of law" as guaranteed in the U. S. Constitution, XIV Amendment, Section 1, and Article IV, Section 2;

3. Whether or not the facts stated in Question 1 (a) and (b) above are arbitrary and unreasonable and in violation of the XIV Amendment of the United States Constitution in that the penalty imposed varies from one non-resident taxpayer to another according to the number of members in his family which are dependent on him for support;

4. Whether or not a Three Judge Court convened pursuant to 28 U. S. C., 2281, 2284, has jurisdiction of the questions stated above pursuant to the provisions of 28 U. S. C., 1331, 1343 (3);

5. Whether or not the statutes and case decisions of the State of Missouri afford the non-resident taxpayer in the circumstances alleged in the questions stated above a "plain, speedy and efficient remedy", if any such remedy is afforded, within the meaning of 28 U. S. C., 1341.

CONSTITUTIONAL ARTICLES, AMENDMENTS, AND UNITED STATES STATUTES AND MISSOURI STATE STATUTES INVOLVED.

The statutory law in this case involves the United States Constitution, Article IV, Section 2, and Amendment XIV; Sections 1253, 1331, 1341, 1343 (3), 2281, and 2284, of Title 28 of the U. S. C.; and Chapter 143.170, Revised Statutes of Missouri (1959).

STATEMENT.

Appellants, over seven hundred fifty citizens and residents of the State of Illinois (hereinafter referred to as non-resident taxpayers) brought suit against the Director of Revenue for the State of Missouri (hereinafter referred to as the Director of Revenue), pursuant to the provision of 28 U. S. C., 2281, 2284. The relief sought was to enjoin the Director of Revenue from collecting or attempting to collect certain Missouri State income taxes from the non-resident taxpayers and from attempting to assess civil and criminal penalties against the non-resident taxpayers for failure to file Missouri state income tax returns.

The non-resident taxpayers alleged in their Complaint that as citizens of the United States they were being deprived of equal rights solely on the basis of their being non-residents of the State of Missouri. They alleged that the "non-resident taxpayer penalty" provided for in Missouri Revised Statutes, Chapter 143.170 (1959) denied them, through the actions of the Defendant, a $1,200.00 exemption for each taxpayer and his wife, and $400.00 for each dependent, solely on the basis of their non-residency in the State of Missouri; that such a denial by the Defendant is not and cannot be made to a Missouri resident taxpayer; that such effect is the clear intent and only reasonable interpretation of the Missouri Statute involved; that the penalty varies from one non-resident taxpayer to another in direct relationship to the exemptions he would be entitled to if not a non-resident; that interest and other penalties are assessed on the non-resident, including the commencement of criminal proceedings provided for to enforce the income tax, with a two year imprisonment penalty; and that no relief for payment under protest payments or any appeal from the Defendant's determination

of the constitutionality of this penalty is allowed the non-resident taxpayers by State Statutes or Constitution.

An informal agreement was entered into with the Attorney General's Office of the State of Missouri that none of the non-resident taxpayers to this suit would be criminally or civilly prosecuted during the pendency of the suit. Pursuant to this agreement, criminal proceedings were continued which were instituted against several non-residents who were Plaintiffs. These facts and agreement were noted as part of the record.

At the hearing resulting in a final order being entered, the following stipulation as to the facts was made by the parties:

1. That each party plaintiff is or has been for some years last past, since January 1, 1956, employed by various employers located in the State of Missouri, and during part or all of such employment each party plaintiff has been a resident and citizen of the State of Illinois, and a citizen of the United States of America.

2. That the defendant, as Director of Revenue of the State of Missouri, and his predecessor during said period, were and are charged by law with the duty of collecting Missouri State income tax from individuals deriving income from prescribed gainful business ventures, or employment in the State of Missouri, and by said statutes is charged with administering and enforcing said statutes during said period of time.

3. That the Missouri income tax statute at all times herein alleged provided among other provisions as follows:

> "A non-resident individual may receive the benefit of the exemption (i. e., Twelve Hundred ($1,200.00) Dollars for each resident individual, and an additional Twelve Hundred ($1,200.00) Dollars for his wife or

if head of a household, and an additional Four Hundred ($400.00) Dollars for each dependent) provided for in this section only by filing or causing to be filed with the director of revenue a true and accurate return of his total income, received from all sources, corporate or otherwise in this state, in the manner prescribed by this chapter; and in case of his failure to file such return the director of revenue shall collect the tax on such income, and all property belonging to such non-resident individual shall be liable to distraint for the tax" (parenthetical material added) 143.170 R. S. Mo. (1949).

That said provision is hereafter referred to as the "non-resident penalty provision."

4. That the party plaintiffs have failed to file returns, or declare or pay the Missouri income tax for certain years, in accordance with their answers as set out in their respective Answers to Interrogatories filed herein.

5. That some individuals likely situated as the party plaintiffs but not parties to this suit are under two year parole sentences as a result of criminal proceedings for delinquent taxes, and that in these suits the said taxes were assessed as if these individuals were Missouri residents.

6. That no legal opinions or interprefation of the effect and use of the non-resident provision are included in this Stipulation.

7. That notice of and assessment by certified mail of the tax and penalty in issue, as provided for in the Statute, has been assessed from time to time as to some of the party plaintiffs, allowing them an exemption for the taxpayer assessed only, when he may or may not have been entitled to additional credit for additional exemptions.

THE QUESTIONS ARE SUBSTANTIAL AND A PLAIN, SPEEDY AND EFFICIENT STATE REMEDY IS NOT AVAILABLE.

The arbitrary discrimination, varying from individual to individual according to the size of his family, presents a patent and substantial constitutional question under Amendment XIV and Article IV, Section 2, of the United States Constitution. In many respects the "non-resident penalty" involved is similar to that found in **Travis v. Yale and Towne Mfg. Co.** (1926), 252 U. S. 60, 64 S. Ct. 228, where a classification for a certain exemption was held a violation of the XIV Amendment when the incidence of separation as to out of state residents occurred before the tax was delinquent.

As to a "plain, efficient, and speedy state remedy," the non-resident taxpayers, the record and case decisions clearly show, have no, or at best a completely negatory state remedy. This is because the statute provides for a thirty (30) day registered mail notice to a taxpayer of the Director's determination, and then states that determination is binding if not appealed from in thirty (30) days.

The facts and Missouri Statute and case decisions are such that all a non-resident taxpayer, situated as the party plaintiffs are, can do is (1) pay the tax and penalty; (2) wait until he is apprehended on the criminal offense provisions, and trial, and face a statutory penalty of two years if convicted, and then attempt to appeal the sentence and raise the constitutional question; or (3) attempt to institute a (i) state declaratory judgment action to have the tax and non-resident penalty declared unconstitutional with no right secured to him to pay the tax into the trial court or under protest; and (ii) pray for an injunction against criminal proceedings which can

be instituted while he is attempting to show the merits of (i.).

Unfortunately, for non-residents, alternative (3) is worthless since the Missouri case decisions prohibit Missouri Courts from enjoining criminal prosecution, even if the act is unconstitutional. In addition, it has been held that in a tax case an unconstitutional allegation does not give jurisdiction under the Missouri Declaratory Judgment Act. **State ex rel. Kenamore v. Wood**, 155 Mo. 425, 56 S. W. 474, and **State ex rel. Chase v. Hall**, 277 Mo. 594, 250 S. W. 64.

The opinion of the Three Judge court completely ignores or misapprehended the nearly complete, if not total fruitlessness, of state litigation when it stated:

> "The fact that plaintiffs in the case at bar did not pursue their administrative remedy within the thirty days alloted by statute after receiving their letter of assessment can only imply that they were guilty of a certain amount of laxity which might possibly amount to laches. Further, under Sec. 527.020, R. S. Mo. (1959), plaintiffs would clearly have the right to bring a declaratory judgment action in the state courts to have the validity of the statute in question determined. Thus, it can be seen that the state remedy is plain, speedy and efficient."

In the next paragraph of the opinion, while conceding that there is no provision for the state to pay interest on payments of penalty or tax to it, if the state was and could be were ordered to pay it back, which the appellants deny, the court confuses the remedy available to a non-resident taxpayer who appealed within thirty (30) days of being notified of the assessment by registered mail, and the remedy of one who lets the thirty (30) days run:

> "Even if the failure of Missouri to provide for interest on sums paid to it under protest were enough

to deny a plain, speedy and efficient remedy, this Court can find nothing in the Missouri administrative procedure act or the sections of the Missouri income tax law relating to administrative appeal procedure to indicate that plaintiffs need pay the assessment while it is in the process of litigation. In fact, the statutes clearly contemplate that these sums need not be paid to the state pending the final outcome of the litigation."

It is respectfully submitted that the opinion rendered by the Three Judge court ignores the doctrine laid down by this court in **Spector Motor Service, Inc., v. O'Connor** (1951), 340 U. S. 602, that doubt of the state remedy is considered to be uncertainty as to the adequacy of the state court remedy. Subsequent Court of Appeals and Three Judge court decisions have, on the issue of plain, efficient and speedy remedy, held it to be absent where:

(a) **U. S. & Olin Mathieson v. Dept. of Revenue of State of Illinois** (N. D. Ill., E. D., 1961), 191 F. Supp. 723. A remedy by way of protest, hearing and court review and suit under the Administrative Review Act and by way of declaratory judgment did not constitute "a plain, speedy and efficient remedy" where a bond is required to be posted in lieu of payment and no provision for the state to pay the cost is made.

(b) **Dento et al. v. City of Carrollton, Georgia, et al.** (C. C. A. 5th 1956), 235 F. 2d 481. The collection of a state tax, when illegal, may be enjoined by a federal court where the tax has clearly punitive qualities and presents such a heavy burden that to decline equitable relief would be to deny judicial review altogether.

In **Schlosser v. Walsh** (D. C. S. D. 1934), 55 F. Supp. 993, in facts nearly identical with the instant case, involving a state income tax, in an opinion written by Chief

Judge Gordener for a Three-Judge court, jurisdiction was found under the former Section 41 (4), which is identical with the present Section 1343 except for procedural changes.

It is respectfully submitted: (1) Under the plain language of Sec. 1343 jurisdiction in this Court clearly exists in the instant facts; (2) that no plain, speedy, and efficient remedy—in fact, no remedy of any certainty is afforded the plaintiff in Missouri; (3) that the penalty and tax involved is patently, arbitrary, capricious and unreasonable and threatens to deprive the plaintiffs of freedom and of property rights secured by the Federal Constitution; (4) that this Court sits as a court of equity, and should grant the appropriate remedy.

Respectfully submitted,

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APPENDIX A.

OPINION BELOW.

In the United States District Court for the Western District of Missouri, Central Division.

Edward W. Abernathy et al., Plaintiffs,
vs.
Milton Carpenter, Director of Revenue for the State of Missouri, Defendant.
No. 723.

Before Ridge, Circuit Judge, and Gibson and Becker, District Judges.

Order.

(Filed Sep. 14, 1962.)

The opinion of Gibson, District Judge, is adopted as the opinion of the Court.

It Is Ordered That:

(1) This proceeding be, and the same is hereby, dismissed at the plaintiffs' costs; and

(2) Inasmuch as the Court's ruling disposes of the issues in this case, the motion to dismiss is now moot and for that reason is not ruled upon.

Albert A. Ridge,
Albert A. Ridge,
Circuit Judge.

Floyd R. Gibson,
Floyd R. Gibson,
District Judge.

William H. Becker,
William H. Becker,
District Judge.

In the United States District Court for the Western District of Missouri; Central Division.

Edward W. Abernathy et al.,
Plaintiffs,
vs.
Milton Carpenter, Director of Revenue for the State of Missouri,
Defendant.
No. 723.

Before Ridge, Circuit Judge, and Gibson and Becker, District Judges.

Memorandum Opinion.

Gibson, District Judge:

This is an action, brought by a large number of plaintiffs, all citizens and residents of the State of Illinois, against the Director of Revenue for the State of Missouri, pursuant to the provisions of 28 U. S. C. A., § 2281, and 28 U. S. C. A., § 2284. The purpose of the action is to enjoin defendant from collecting or attempting to collect certain Missouri state income taxes from plaintiffs and from assessing, or attempting to assess, civil and criminal penalties against plaintiffs for failure to file Missouri state income tax returns.

Plaintiffs contend that they are being denied the "equal protection of the law" and "due process" by the actions of defendant pursuant to § 143.170, R. S. Mo. (1959). Said Section provides:

> [After providing deductions of $1,200 as a personal exemption, and $1,200 for a spouse, and $400 for each dependent.] "A nonresident individual may receive

> the benefit of the exemption provided for in this section only by filing or causing to be filed with the director of revenue a true and accurate return of his total income, received from all sources, corporate or otherwise, in this state, in the manner prescribed by this chapter; and in case of his failure to file such return the director of revenue shall collect the tax on such income, and all property belonging to such nonresident individual shall be liable to distraint for the tax."

Plaintiffs contend, in their amended complaint, that this provision is violative of Artiele IV, § 2, and Amendment XIV, § 1, of the Constitution of the United States, in that it "discriminates between the nonresident Plaintiffs and residents of the state of Missouri solely on the basis of State residence . . . ."

Plaintiffs further contend that the statute is violative of the Fourteenth Amendment in that it is arbitrary and unreasonable because the amount of the penalty imposed upon nonresidents is beyond that necessarily required to enforce the tax against nonresidents.

A hearing was held by the statutory three-judge Court on August 20, 1962, at which time the Court took under advisement defendant's motion to dismiss, along with the full case on its merits.

At the hearing plaintiffs admitted that some power existed for the State of Missouri to impose sanctions against nonresidents different from those imposed upon residents of the State of Missouri, in order to enforce the collection of the tax. However, plaintiffs continue to maintain that the sanctions imposed by the state statute in question are arbitrary and unreasonable.

Plaintiffs admit that the State of Missouri might impose a penalty for failure of a nonresident to file a return which might consist of a reasonable percentage figure of the tax

liability, but contend that any penalty based on a denial of personal exemptions, being by nature unequal between nonresidents who happen to have more or less personal exemptions than other nonresidents, is arbitrary and unreasonable.

The initial problem that arises is the question of the jurisdiction of this Court. There are two possible grounds for federal jurisdiction. One is the "federal question" jurisdiction contained in 28 U. S. C. A., § 1331. The other possible ground for jurisdiction is the "civil rights" provision contained in 28 U. S. C. A. 1343 (3).

It seems clear that any matter which would come under the "civil rights" jurisdiction would also involve a federal question. However, it cannot be said that the jurisdiction conferred on the federal courts under these statutes is coextensive. The distinction between the two statutes appears in the case of **Hague v. C. I. O.**, 307 U. S. 496, 67 S. Ct. 1426, 91 L. Ed. 1685. Although there was no opinion of the Court, as such, in that case, the concurring opinion of Mr. Justice Stone makes the distinction between the two jurisdictional grounds, which this Court believes to be the correct interpretation.

Mr. Justice Stone pointed out that the statutes existed side by side and, therefore, neither could be interpreted as abolishing the other. He went on to say, at page 531 of 307 U. S.:

> "The conclusion seems inescapable that the right conferred by the [predecessor of the current civil rights act] to maintain a suit in equity in the federal courts to protect a suitor against a deprivation of rights or immunities secured by the Constitution, has been preserved, and that **whenever the right or immunity is one of personal liberty, not dependent for its existence upon the infringement of property rights,** there is jurisdiction under [the predecessor of 28 U. S.

C. A., § 1343] to entertain it without proof of jurisdictional amount." (Emphasis supplied.)

In the case at bar, the deprivation, if there be any, is not one of personal liberty, but merely a property right, i. e., the right under all circumstances to deduct certain exemptions from gross income for purpose of an income tax. The plaintiffs may avail themselves of the personal exemptions as a matter of right by duly filing their tax returns in accordance with the provisions of the statute.

In the case of **Holt v. Indiana Manufacturing Co.**, 176 U. S. 68, defendants, who were tax officers of a county in the state of Indiana, attempted to levy a personal tax against the capital assets of plaintiff. Plaintiff alleged that these capital assets consisted entirely of letters patent issued by the United States government, which were not subject to state taxation. In discussing jurisdiction under the predecessor of our current Civil Rights Act the Court stated, at page 72 of 176 U. S.:

". . . it is sufficient to say that [the Civil Rights Statutes] refer to civil rights only and are inapplicable here."

The Court is aware of the case of **Schlosser v. Welsh**, 5 F. Supp. 993, cited by plaintiffs. In that case, defendant was attempting to assess an income tax of the State of South Dakota against plaintiffs who worked for the federal government. The taxing statute involved, as interpreted by defendant, excluded from its operation all income received from the federal government by **officers** thereof, as remuneration, but not that income received from the federal government by **employees** thereof. Defendant had ruled that plaintiffs were **employees** of the federal government, and not **officers**, and, therefore, were liable for the tax. The Court first found no jurisdiction under the "federal question" provision, due to a lack of the requisite jurisdictional amount. However, it went on

to find jurisdiction under the "civil rights" provision. First stating that jurisdiction must be determined by looking at the statements made in the complaint to determine whether they, standing alone, disclose that there is a real or substantial controversy over which the Court has jurisdiction, the Court went on to say, at page 997 of 5 F. Supp.:

> "Turning now to the bill of complaint, it is observed that one of the allegations and claims is that defendant has arbitrarily excluded plaintiffs from a class to which logically and lawfully they belong . . . This, we think, presents a controversy over which this court has jurisdiction."

It is clear that in the **Schlosser** case, the Court based its opinion on the question of jurisdiction on the undoubtedly correct recognition of that fact that the arbitrary exclusion of a person rightfully belonging to a class of persons legally immune from state taxation is a denial of the "equal protection" clause of the Fourteenth Amendment.

Thus the case at bar may be distinguished from the **Schlosser** case. None of the many plaintiffs in the case at bar claim to belong to a class of persons which is legally immune from the Missouri income tax. The claim is simply that they are arbitrarily denied certain exemptions as a penalty for not duly filing their Missouri State Income Tax returns. This is not a circumstance within the purview of the "civil rights" jurisdiction, as it is solely a property or monetary right and not a right of "personal liberty," as these terms are used by Mr. Justice Stone in the case of **Hague v. C. I. O.** (cited supra).

There being no jurisdiction under the "civil rights" provision, 28 U. S. C. A., § 1343, the sole possible remaining ground for federal jurisdiction is the "federal question" provision, 28 U. S. C. A., § 1331. However, this statute requires, in addition to a federal question, an amount in

controversy in excess of $10,000. Admittedly, none of the plaintiffs individually can attain this requisite amount. Further, the individual claims may not be aggregated to achieve the $10,000 amount necessary to confer jurisdiction on this Court, in a class action such as this. This is made clear by both the **Hague** case and the **Schlosser** case (both cited supra), and the cases therein cited. Therefore, the ultimate conclusion is that this Court has no jurisdiction over the **case at bar.**

Even if this Court did have jurisdiction, a further bar to the relief sought by plaintiff exists. That is 28 U. S. C. A., § 1341, which provides:

> "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."

In the opinion of this Court, such a plain, speedy and efficient remedy is available in the courts of Missouri. The provisions of § 143.250 and § 143.260, R. S. Mo. (1959), provide for administrative review of an assessment and § 536.100 to § 536.140, R. S. Mo. (1959), provide for judicial review of the final administrative decision.

Section 143.250 provides that petitions for correction or abatements of assessments may be filed with the director of revenue within 30 days of the time the original assessment is made. The director of revenue then has the duty to fix a time for a hearing on the petition, at a time not less than 15 days from the time of filing the petition. The clear import of this section is to provide for speedy hearings for taxpayers aggrieved by assessments.

Section 143.260 provides for appeals from the decision of the director of revenue to the state tax commission. This section further provides that the right of a taxpayer

to appeal the final assessment of the director of revenue is not dependent on the taxpayer first petitioning the director of revenue for a correction of the assessment.

Section 536.100 provides that any person aggrieved by a final decision of an administrative body is entitled to judicial review in the courts of Missouri, if he has exhausted his administrative remedies. Under § 536.110 the venue and jurisdiction for a review by the Courts of Missouri would be, for a nonresident, the Circuit Court of Cole County. Section 536.120 provides that the reviewing court may make such orders staying the agency's orders as may appear necessary. Under § 536.140 one of the grounds for review is whether the action of the agency is in violation of constitutional provisions, the issue in the case at bar. This same section provides that appeals may be taken from the Court's decision in administrative review cases the same as in other civil cases.

It seems clear that the remedy provided plaintiffs by the above-cited statutes is plain, speedy and efficient.

In the case of **Bucklin Coal Mining Co. v. Unemployment Compensation Commission**, 53 F. Supp. 434 (D. C. W. D. Mo., 1943), a three-judge Court, sitting in this same district, held that a statutory review procedure regarding decisions of the Unemployment Compensation Commission, substantially the same as that providing for review of decisions of the Tax Commission, was a plain, speedy and efficient remedy, within the meaning of 28 U. S. C. A., § 1341. The fact that plaintiffs in the case at bar did not pursue their administrative remedy within the thirty days allotted by statute after receiving their letter of assessment can only imply that they were guilty of a certain amount of laxity which might possibly amount to laches. Further, under § 527.020, R. S. Mo. (1959), plaintiffs would clearly have the right to bring a declaratory judgment action in the state courts to have the validity of the statute

in question determined. Thus, it can be seen that the state remedy is plain, speedy and efficient.

Plaintiffs contend that the Missouri remedy is not plain, speedy and efficient for the reason that there is no provision in the Missouri law which would enable plaintiffs to recover interests from the state on taxes paid on the assessments in question, if the statute was finally adjudicated unconstitutional. The question is whether this renders the state remedy not "plain, speedy and efficient." Under the circumstances of this case we find it does not so impair the remedy set up under the Missouri statutes. In any individual plaintiff's situation in the case at bar it can be demonstrated that the sum any plaintiff would be entitled to in interest would be so small to be inconsequential. Take for example a plaintiff having a spouse and ten dependents. Such a person would be entitled to $6,400 in exemptions. Assuming that such person was in the highest income tax bracket, his rate of income tax would be 4 per cent, under § 143.010, R. S. Mo. (1959). If these exemptions were denied the taxpayer, he would be subjected to an additional tax of $256.00. At a rate of interest of 6 per cent on this additional tax, the state would only be assessed a sum of $15.36 per annum in the event that the taxpayer's protest procedure was successful and the statute in question declared unconstitutional. This is clearly not a sufficient sum to render the state remedy less plain, speedy, or efficient. Even if the failure of Missouri to provide for interest on sums paid to it under protest were enough to deny a plain, speedy and efficient remedy, this Court can find nothing in the Missouri administrative procedure act or the sections of the Missouri income tax law relating to administrative appeal procedure to indicate that plaintiffs need pay the assessment while it is in the process of litigation. In fact, the statutes clearly contemplate that these sums need not be paid to the state pending the final outcome of the litigation.

In support of their contention that the Missouri remedy is not plain, speedy and efficient, plaintiffs cite to the Court the case of **United States v. Department of Revenue of the State of Illinois,** 191 F. Supp. 723 (D. C. N. D. Ill., 1961), which held that remedy by way of protest hearing and court review provided by the Illinois Retailers Tax Act and the Illinois Administrative Review Act did not constitute "a plain, speedy and efficient remedy." A careful reading of the decision in the above-entitled case, however, discloses that the Court's opinion was based on the fact that an aggrieved party was required by statute to post a bond in lieu of paying the tax in question while the appeal and review procedure was pending. The Court there apparently was of the opinion, that, since there was no provision for the state to bear the cost of such bond, this was tantamount to a failure to provide for the payment of interest on taxes wrongfully assessed, and that, therefore, the state remedy was not plain, speedy and efficient. This Court has been unable to discover any provision in the laws of Missouri which requires such a bond, and plaintiffs have not cited any such provision to the Court.

Upon a reading of all the Missouri statutes applying to administrative and judicial review of an assessment of the Director of Revenue in an income tax matter, it clearly appears that plaintiffs may completely exhaust the Missouri administrative and judicial review procedures without ever having paid the tax in question. Obviously, in such a circumstance, it is unnecessary for the state to provide for payment of interest.

Even if it should be that a plaintiff should be required to prepay the tax before seeking review, it has been demonstrated that, in the case at bar, the amount of interest which would be due any individual plaintiff would be so small as to be practically insignificant, and this could not render the state remedy less plain, speedy and efficient.

It is noted by the Court that there is some doubt as to whether the constitutionality of the statute in question has been ruled upon by the Missouri state courts. While it is true that, in the case of **Stouffer v. Crawford**, 248 S. W. 581 (Mo. 1932), the Missouri Supreme Court stated that the statute in question was constitutional, it is also noted that, as the plaintiff in that case was a resident of Missouri, the Court was of the opinion that he had no right to raise the issue of the constitutionality of the statute in question. Therefore, the ruling must be regarded as dictum. This is mentioned only to indicate that this Court has considered the doctrine of federal abstention pending a definitive determination by the state courts as to the interpretation and constitutionality of the statute in question. However, this issue need not be determined at this time.

For the reasons above stated, the complaint is dismissed, at plaintiffs' costs.

It Is So Ordered.

APPENDIX B.

STATUTORY PROVISIONS (PERTINENT PROVISIONS.)

Chapter 143.

Income Tax.

Sec.

143.010 Tax rate on individuals

143.020 Taxation of nonresident individuals

143.030 Tax rate on corporations, generally

143.040 Business corporations—income subject to tax

143.050 Railroad companies—income subject to tax

143.060 Interstate bridge companies—how taxed

143.070 Telephone and telegraph companies, income subject to tax

143.080 Election by corporation of method of return—revenue director's duties

143.090 Tax to be at rate of federal deduction, when

143.100 Income defined—net income

143.105 Service pay of members of armed forces not taxable, when

143.110 Reports to director of revenue of payments to others—penalty

143.120 Income of certain organizations exempt

143.130 Income of estates, how taxed

143.140 Certain trusts exempted—amounts distributed shall be taxed, how

143.150 Exemptions

Sec.

143.160 Determination of net income—deductions allowed —adjusted gross income defined

143.165 Standard deductions may be taken, when

143.170 Dependents, deductions for

143.180 Credit for corporate income taxes paid this state—credit to stockholders of national banks

143.190 Deductions allowed corporate taxpayers

143.200 Director to prescribe rules and regulations

143.210 Director may establish branch offices

143.220 Short form tax return

143.230 Tax returns, when filed—assessments—fiscal year reports, change of basis

143.240 Estimate of income, when made—examination of books—credit slip—additional assessment—administration of oaths

143.250 Abatement or correction of assessment—petition—hearing

143.260 Appeals to state tax commission

143.270 Officers not to divulge information—exceptions—penalty

143.280 Tax delinquent, when—notice of amount of tax

143.290 Action to collect tax

143.300 Additional time for making return—interest on taxes during extension

143.310 Tax returns available to federal authorities

143.320 Income tax returns to be filed—may be destroyed after four years

143.330 Interest and penalties

143.340 Governor to request information concerning federal incomes

Cross References.

Governor authorized to purchase real estate at tax sale where state has interest, R. S. Mo. 26.040, 26.050.

State collector of revenue to collect state income tax, R. S. Mo. 136.030.

143.010. Tax rate on individuals.—1. Every single individual, a citizen or resident of this state having a gross income in excess of one thousand two hundred dollars, and every married couple, citizens or residents of this state having a gross income in excess of two thousand four hundred dollars, shall file an income tax return or returns, and pay a tax upon net income received, from all sources during the preceding year in excess of the exemptions herein provided.

2. The rate of tax on net incomes shall be as follows:

$0	to $1,000.00	1%		
1,000.00	to 2,000.00	1½%	less $	5.00
2,000.00	to 3,000.00	2 %	less	15.00
3,000.00	to 5,000.00	2½%	less	30.00
5,000.00	to 7,000.00	3 %	less	55.00
7,000.00	to 9,000.00	3½%	less	90.00
9,000.00	or more	4 %	less	135.00

The entire taxable amount of each net income shall be computed at only the one rate wherein the income falls.

3. Every individual, not a citizen or resident of this state, shall file an income tax return and pay a tax at the rate prescribed in subsection 2 of this section on the net income received from all sources within this state during the preceding year in excess of the exemptions herein provided.

4. Exemptions shall be prorated and the per cent of tax levied shall be allocated to portions of any year where the entire year is not covered or different rates may prevail.

(R. S. Mo. 1939, § 11343, A. L. 1945, p. 1881. A. 1949, S. B. 1026, A. L. 1959, H. B. 395.)

Prior revisions: 1929, § 10115; 1919, § 13106.

For case notes, see Vol. III, R. S. Mo. 1949.

143.020. Taxation of nonresident individuals.—1. The term "nonresident individuals" includes every person who is domiciled elsewhere than in Missouri and who is not a resident of Missouri.

2. Every such nonresident individual shall pay an income tax at the rates prescribed in section 143.010 upon his net income, derived from property owned, and earnings derived from salaries, wages or compensation for personal services of whatever kind and in whatever form paid within the state of Missouri. Such nonresident shall be entitled to deductions as provided in section 143.160 but shall be subject to proration on the following basis: Where the entire income of such nonresident is not earned in the state of Missouri the allowable deductions, including personal exemptions, shall be prorated on the basis that the gross income in the state of Missouri bears to the gross income of such nonresident from all sources for the year.

143.090. Tax to be at rate of federal deduction, when.—In the event that the taxes imposed on any income by the laws of this state shall not equal the amount that may hereafter be permitted to be deducted by the United States from the United States tax on such income for the same period, then there shall be levied, assessed and collected on said income for said period, a tax equal to the amount of such deduction in lieu of all other taxes on said income determined as provided by the laws of this state.

(R. S. Mo. 1939, § 11377.)

143.100. Income defined—net income.—1. Income shall include gains, profits, and earnings derived from salaries, wages or compensation for personal services of whatever kind and in whatever form paid; and from professions, vocations, businesses, trade, commerce, or sales or dealings in property whether real or personal, growing out of the ownership or the use of any interest in real or personal property. In any case of sale of capital assets, consisting of real or personal property which has been held for less than six months one hundred per cent of the gain or loss shall be taken into consideration in computing net income; where real or personal property has been held for more than six months only fifty per cent of the gain or loss resulting from sale or exchange shall be taken into account in computing net income, but in such cases any loss used in computing the net income shall not exceed two thousand five hundred dollars over and above gain for the same period. The term "**capital assets**", as used in this subsection, means property held by the taxpayer (whether or not connected with his trade or business), but does not include:

(1) Stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business;

(2) Personal property used in his trade or business, of a character which is subject to the regular allowance for depreciation;

(3) A copyright, a literary, musical, or artistic composition or similar property, held by a taxpayer in whose hands the basis of such property is determined, for the purpose of determining gain from a sale or exchange, in whole or in part by reference to the basis of such property

in the hands of the person whose personal efforts created such property;

(4) Gain or loss on the sale of property as defined in the foregoing descriptions, subdivisions (1) to (4), shall be classified as ordinary gain or loss transactions taxable one hundred per cent;

(5) In the case (a) of a casual sale or other casual disposition of personal property (other than property of a kind which would be properly included in the inventory of the taxpayer if on hand at the close of the taxable year), for a price exceeding one thousand dollars, or (b) of a sale or other disposition of real property, if in either case the initial payments do not exceed thirty percent of the selling price, the tax on the net profit on such transaction, computed as aforesaid, shall be imposed only on that portion of such net profit which the amount actually received in payment of the purchase price bears to the total purchase price. As used in this section, the term **"initial payment"** means the payments received in cash or property other than evidences of indebtedness of the purchaser during the taxable period in which the sale or other disposition is made.

2. Income shall also include interest, rent, dividends, securities and gains, profits and earnings from any other transactions of any business carried on for gain or profit; and from any sources whatever; income shall also include the share of each person in the undistributed profits and earnings of partnerships, and the share of each stockholder in the undistributed profits and earnings of corporations, joint stock companies, or joint stock associations whose income is not exempted and against whose income there is no provision for a tax.

3. Amounts received as an annuity under an annuity contract shall be included in gross income; except that

there shall be excluded from gross income the excess of the amount received in the taxable year over an amount equal to three per cent of the aggregate premiums or considerations paid for such annuity, whether or not paid during such year, until the aggregate amount excluded from gross income equals the aggregate premiums or considerations paid for such annuity.

4. Income shall also include all periodic payments, whether or not made at regular intervals, received by a wife who is divorced or legally separated from her husband under a decree of divorce or separate maintenance, but shall not include that portion of such periodic payments which are fixed by the decree or written instrument for the support of minor children of such husband. If any periodic payment is less than the amount specified in the decree or written instrument for the support of minor children, such payment, to the extent of such sum payable for such support, shall be considered a payment for such support. Such payments as are imposed upon or incurred by such husband under such decree or under a written instrument incident to such divorce or separation for alimony shall be deductible from the adjusted gross income as determined in accordance with this section. No part of any court decree which represents payment for child support is deductible on the income tax return.

5. Interest on bonds, notes or other interest-bearing obligations of residents, corporate or otherwise, to the extent deductible by such residents, interest on any obligation secured by lien on any property having a situs in this state, to the extent deductible by the lienor, and wages, salaries and compensation paid to a nonresident for services rendered in this state, and undistributed profits and earnings of partnership accruing on account of business and transaction in this state, and dividends on capital stock, and undistributed profits and earnings of corpora-

tions, joint stock companies or joint stock associations whose income is not exempted and against whose income there is no provision for a tax, accruing on acount of business transactions in this state, and gains, profits and earnings from any use or sale of real or personal property in this state, or any interest therein shall be considered as from sources within this state.

6. Dividends on the stock of any subsidiary corporation incorporated under the laws of this state shall not be regarded as taxable income to the parent corporation where such parent corporation makes a consolidated return for income tax purposes to the United States and includes the income of such subsidiary therein. Dividends on corporate stock owned by another corporation shall not be income of the corporation receiving such dividends where the corporation declaring the dividend has paid its tax to this state on the portion of its income subject to tax by this state.

7. Net income shall be determined by deducting from income the deductions now or hereafter provided by law.

(R. S. Mo. 1939, § 11345, A. L. 1945, p. 1881, A. L. 1947, V. I, p. 527, A. L. 1953, p. 745, A. L. 1959, H. B. 246.)

Prior revisions: 1929, § 10117; 1919, § 13108.

For case notes, see Vol. III, R. S. Mo. 1940.

143.105. Service pay of members of armed forces not taxable, when.—The amount of service pay up to but not exceeding three thousand dollars received by a member of the armed forces of the United States on active duty in any one calendar year shall not be taxable and need not be included in his state income tax return for the year 1950 and every year thereafter. No person receiving a dishonorable discharge shall receive this exemption. The administrator, executor or next of kin of any deceased

member of the armed forces may claim such exemption for such person.

(L. 1951, p. 854, § 1.)

143.110. Reports to director of revenue of payments to others—penalty.—1. All persons, corporations, joint stock companies, joint stock associations, both domestic and foreign, and partnerships, and each partner thereof, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, and employers, the treasurer of every city, town, county, or other subdivision, the treasurer of every municipal corporation, district or subdivision organized and existing under the laws of this state, making payment to another person, of interest, dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, distributions and participations, emoluments, or other fixed or determinable gains, profits, or income of twelve hundred dollars or more, to any single person or twenty-four hundred dollars or more to a married person, except dividends which shall all be reported if one hundred dollars or more, or if the marital status of the individuals is unknown the sum of twelve hundred dollars or more, in any taxable year, to any taxpayer taxable under this chapter, shall render a true and accurate return to the director of revenue and the person to whom said payment is made on or before March first of each year, setting forth the amounts of such gains, profits, and income, during the preceding calendar year, and the name and address of the recipient of such payment, and such dividend report shall also contain a statement of the proportion of net income used as a basis for determining the amount of tax against the corporation on account of said net income and every partnership and corporation which is not now or may not hereafter be subject to a tax based upon income and whose undistributed income is now or hereafter declared to be income to

the partners, stockholders, or other owners, shall render a true and accurate return to the director of revenue at such times, in such form and manner which shall show in addition to the above matters, the undistributed portion of net income for that period, and the portions to which each partner or stockholder may be entitled on the last day of the taxable year.

2. Every corporation, joint stock company, joint stock association, partnership, partner, or individual, whether acting as agent or principal, who makes or causes to be made any false report to the director of revenue or who fails to make any report to the director of revenue required to be made, shall be guilty of a misdemeanor and shall be punished by fine of not to exceed one thousand dollars, and imprisonment of not to exceed six months in the county jail, or both such fine and imprisonment.

(R. S. Mo. 1939, § 11345, A. L. 1945, p. 1881, A. L. 1947, V. I, p. 527.)

Prior revisions: 1929, § 10117; 1919, § 13108.

143.120. Income of certain organizations exempt.— There shall not be taxed under this chapter any income received by any:

(1) Labor, agricultural or horticultural organizations;

(2) Mutual savings bank not having a capital stock represented by shares;

(3) Fraternal-beneficiary society, order or association, operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident or other benefits to the members of such society, order, or association or their dependents;

(4) Domestic building and loan association and cooperative banks without capital stock organized and operated for mutual purposes and without profit;

(5) Cemetery company owned and operated exclusively for the benefit of its members, unless said cemetery is operated for profit;

(6) Corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

(7) Business league, chamber of commerce or board of trade not organized for profit and no part of the net income of which inures to the benefit of any private stockholder or individual;

(8) Civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

(9) Club organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or member;

(10) Farmers' or other mutual hail, cyclone or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization, the income of which consists solely of assessments, dues and fees collected from members for the sole purpose of meeting its expenses;

(11) Farmers' fruit growers' or like association, organized and operated as a sales agent for the purpose of marketing the products of its members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of produce furnished by them;

(12) Corporation or association organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;

(13) Federal land banks and national farm loan associations, as provided in section 26 of an act of congress approved July 17, 1916, entitled "An act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create government depositaries and financial agents for the United States, and for other purposes";

(14) Joint stock land banks as to income derived from bonds or debentures or other joint stock land banks or any federal land bank belonging to such joint stock land bank;

(15) Express companies which now pay an annual tax on their gross receipts in this state and insurance companies which pay an annual tax on their gross premium receipts in this state.

(R. S. Mo. 1939, § 11344).

Prior revisions: 1929, §10116; 1919, § 13107.

For case notes, see Vol. III, R. S. Mo. 1949.

143.130. Income of estates, how taxed.—Income received by estates of deceased persons during the period of administration or settlement of the estate shall be subject to the tax and taxed to their estate, and also such income of estates or any kind of property held in trust, including such income accumulated in trust for the benefit of unborn or unascertained persons, or persons with contingent interests and income held for future distribution under the

terms of the will or trust shall be likewise taxed, the tax in each instance, except when the income is returned for the purpose of the tax by the beneficiary, to be assessed to the executor, administrator, or trustee, as the case may be; provided, that where the income is to be distributed annually or regularly between existing heirs or legatees, or beneficiaries, the rate of tax and method of computing the same shall be based in each case upon the amount of the individual share to be distributed. Such trustees, executors, administrators, and other fiduciaries are hereby indemnified against the claims or demands of every beneficiary for all payments of taxes which they shall be required to make under the provisions of this chapter, and they shall have credit for the amount of such payments against the beneficiary or principal in any accounting which they may make as such trustees or other fiduciaries.

(R. S. Mo. 1939, § 11347.)

Prior revisions: 1929, § 10118; 1919, § 13109.

For case notes, see Vol. III, R. S. Mo. 1949.

143.140. Certain trusts exempted—amounts distributed shall be taxed, how.—1. A trust created by an employer and employees as part of a stock bonus, pension or profit-sharing plan, for the exclusive benefit of employees, to which contributions are made by such employer or employees, or both, for the purpose of distributing to such employees, the earnings and principal of the fund accumulated by the trust in accordance with such plan, or a trust consisting solely of one or more restricted retirement funds, created for one or more self-employed persons as part of a retirement plan for the exclusive benefit of such self-employed person or persons, to which contributions are made by such self-employed person or persons, for the purpose of distributing to such self-employed person or persons, the earnings and principal of the fund ac-

cumulated by the trust in accordance with such plan, shall not be taxable under sections 143.030 to 143.080, but the amount actually distributed, or made available to any distributee shall be taxable to him in the year in which so distributed or made available, to the extent that it exceeds the total amount theretofore paid in by him.

2. Such distributees shall, for the purpose of the tax, be allowed as credits against net income, such part of the amount so distributed or made available as represents the items of dividends and interest specified in section 143.120.

3. Nonresidents of this state who may be distributees of any such trust shall be exempt from any tax on amounts distributed or made available to them.

(L. 1941, p. 690, § 11347A, A. L. 1959, S. B. 318.)

143.150. Exemptions.—The following income shall be exempt from the provisions of this chapter:

(1) The proceeds of life insurance policies paid to the individual beneficiaries upon the death of the insured;

(2) The amount received by the insured as a return of premium or premiums paid by him under life insurance or endowment contracts, either during the term or at the maturity of the term mentioned in the contract or upon the surrender of the contract;

(3) Any amount received under workmen's compensation acts, as compensation for personal injuries or sickness, plus the amount of any damages received whether by suit or agreement on account of such injuries or sickness, or through the war risk insurance act or any law for the benefit or relief of injured or disabled members of the military or naval forces of the United States;

(4) The value of property acquired by gift, bequest, devise or descent, but the income from such property shall be included as income;

(5) Interest upon the obligations of this state or of any political subdivision thereof, or upon the obligations of the United States or its possessions;

(6) Any income derived from any public utility performing functions of national government or those incident to the state or any political subdivision thereof, or from the exercise of any essential government function accruing to any state, territory or the District of Columbia; provided, that whenever any state, territory or the District of Columbia, or any political subdivision of a state or territory has, prior to the passage of this chapter, entered in good faith into a contract with any person or corporation, the object and purpose of which is to acquire, construct, operate or maintain a public utility, no tax shall be levied under the provisions of this chapter upon the income derived from the operation of such public utility, so far as the payment thereof will impose a loss or burden upon such state, territory or the District of Columbia, or a political subdivision of this state; but this provision is not intended to confer upon such person or corporation any financial gain or exemption or to relieve such person or corporation from the payment of a tax as provided for in this chapter upon the part or portion of said income to which such person or corporation shall be entitled under such contract.

(R. S. Mo. 1939, §11348, A. L. 1947, V. I, p. 527, A. L. 1959, H. B. 512.)

Prior revisions: 1929, §10119; 1919, § 13110.

Status of income from securities of Missouri-Illinois Bi-State agency, R. S. Mo. 70.375.

For case notes, see Vol. III, R. S. Mo. 1949.

143.160. Determination of net income—deductions allowed—adjusted gross income defined.—In ascertaining

net income there may be deducted from gross income derived during the same period the following:

(1) Expenses: All of the ordinary and necessary expenses exclusive of personal living or family expenses, except necessary traveling expenses while away from home in the pursuit of a trade or business, paid within the year in the maintenance and operation of the taxpayer's business and properties, including rentals or other payments required to be made as a condition to the continued use or possession of the property to which the taxpayer has not taken or is not taking title or has no equity; except, that for taxpayers taxed under the provisions of section 143.020, expenses shall be limited to those expenses defined herein which were incurred in connection with the taxpayer's business and properties within the State of Missouri.

(2) Losses: (a) Losses actually sustained during the year incurred in a taxpayer's business or trade, including reasonable allowance for exhaustion, depreciation, obsolescence, wear and tear of property in the business or trade, but in case of a taxpayer under section 143.020 only on business and properties within the state;

(b) Losses sustained during the taxable year and not compensated for by insurance or otherwise, if incurred in any transaction entered into for profit though not connected with the trade or business, but in the case of taxpayer under section 143.020 or section 143.030, only as to such transaction in real or intangible personal property having an actual situs value within the state;

(c) Losses sustained during the taxable year of property not connected with the trade or business (but in case of a taxpayer under section 143.020 or section 143.030 only of real property or tangible personal property having an actual situs within the state) if arising from fires,

storms, shipwrecks or other casualty; or from theft, and not compensated for by insurance or otherwise;

(d) Debts due the taxpayer actually ascertained to be worthless and charged off within the year.

(3) Interest: All interest paid within the year on taxpayer's indebtedness except in case of a taxpayer under section 143.030 and then such proportion of interest as gross income in this state shall bear to the total gross income from all sources.

(4) Taxes: All taxes paid within the year imposed by the authority of the United States or its territories or possessions, or foreign country or under authority of any state, county, school district or municipality or other taxing subdivision of any state or country, not including those assessed against local benefits and inheritance taxes and taxes based on income, except those imposed by the United Sta s on incomes.

(5) Income on which tax is paid in another state or country or in the District of Columbia:

(a) Such part of the income in any taxable year on which a tax is imposed by any other state or country or the District of Columbia and paid to such state or country or the District of Columbia shall be deducted where such income is included in the taxpayer's return, but such credit shall not exceed such proportion of the tax payable under this chapter as the income subject to tax in such other state or country or the District of Columbia bears to the taxpayer's net income upon which the tax is imposed by this chapter;

(b) The word "**income**" as used in this paragraph shall be that portion of income remaining, after deducting all personal exemptions and other statutory deductions, which a resident of this state can claim as the amount on which a tax has been paid to such other state or states.

(6) Donations: Donations which are made within the taxable year to or for the use of:

(a) The state of Missouri or any political subdivision thereof for exclusively public purposes; or

(b) Corporations, associations and societies organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual; or

(c) Posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units or societies are organized in the state of Missouri and if no part of their net earnings inures to the benefit of any private shareholders or individuals; or

(d) A domestic fraternal society, order, or association, operating under the lodge system, but only if such contributions or gifts are to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals; to an amount which in all the above cases combined does not exceed fifteen percent in the case of an individual or five per cent in the case of a corporation of the amount of the taxpayer's adjusted gross income.

(7) Medical expenses: Expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his wife, or dependents, to the extent that such expenses exceed five per cent of the adjusted gross income. If the taxpayer is a single person the maximum deduction for the taxable year shall be not in excess of one thousand two hundred and fifty dollars. If the taxpayer has one or more dependents the maximum deduction shall be not in excess of two thousand

five hundred dollars. In no event shall this deduction be allowed to both husband and wife. The term "medical care" as used in this paragraph shall include amounts paid for the diagnosis, care, mitigation, treatment, or prevention of disease or for the purpose of affecting any structure or function of the body (including amounts paid for accident or health insurance).

The term **"adjusted gross income"** shall be determined by including all items in section 143.100 and permitting all deductions set forth in sections 143.130 to 143.160, except those deductions which are personal in nature and not related to the taxpayer's business or profession.

(R. S. Mo. 1939, § 1139, A. L. 1945, p. 1881, A. L. 1945, p. 1963, A. L. 1947, V. I, p. 527, A. L. 1949, p. 611, A. L. 1959 H. B. 511.)

Prior revisions: 1929, § 10120; 1919, § 13111.

(1955) Amount of federal excise tax paid on purchase of fur coat held deductible from income as tax. Tiger v. State Tax Comm. (Mo.), 277 S. W. (2d) 561.

(1955) Entire amount of loss on sale of securities which were held only two months held deductible as incurred in transaction for profit not connected with trade or business. Tiger v. State Tax Comm. (Mo.), 277 S. W. (2d) 561.

For prior cases, see Vol. III, R. S. Mo. 1949.

143.165. Standard deductions may be taken, when.— Any person whose adjusted gross income, as defined in section 143.160, is in excess of ten thousand dollars may elect to take a standard deduction of five hundred dollars in lieu of itemizing all deductions provided in section 143.160, except deductions authorized on account of taxes imposed by the United States on incomes.

(L. 1961, p. 900, § 143.165.)

143.170. Dependents, deductions for.—For the purposes of this tax, there shall be allowed as an exemption in the nature of a deduction from the amount of the net income of each resident individual, ascertained as provided herein, the sum of one thousand two hundred dollars plus one thousand two hundred dollars additional if the person making the return be the head of a family, or a married man with a wife living with him, or plus the sum of one thousand two hundred dollars additional if the person making the return be a married woman with a husband living with her; but in no event shall this additional exemption of one thousand two hundred dollars be deducted by both a husband and a wife; provided, that only one deduction of two thousand four hundred dollars shall be from the aggregate income of both husband and wife when living together; provided, further, that if the person making the return is the head of a family there shall be an additional exemption of four hundred dollars for each person dependent upon such head of a family if related by blood or marriage if said dependent receives more than one-half of his or her support from the person making the return, but this provision shall operate only in the case of one parent in the same family. No person can be claimed as a dependent who has a gross income of four hundred dollars or more during the taxable year for which the return is filed and dependents shall be defined as follows: Children, grandchildren, great-grandchildren, stepchildren (but not their children), brothers, sisters, stepbrothers and sisters, half brothers and sisters, parents, grandparents, great-grandparents, stepfathers, stepmothers (but not their parents), nephews, nieces, uncles, aunts, sons-in-law, daughters-in-law, fathers-in-law, mothers-in-law, brothers-in-law or sisters-in-law and legally adopted children; provided, that if the taxpayer did not occupy the status of head of a family except by reason of there being one or more dependents for whom he would be en-

titled to credit under this section, the credit shall be disallowed with respect to one of such dependents; provided further, that guardians or trustees shall be allowed to make this personal exemption as to income derived from the property of which such guardian or trustee has charge in favor of each ward or *cestui que trust;* provided, further, that in no event shall a ward or *cestui que trust* be allowed a greater personal exemption than one thousand two hundred dollars, or, if married two thousand four hundred dollars as provided in this section, from the amount of net income received from all sources. There shall be allowed an exemption from the amount of net income of estates of deceased persons during the period of administration or settlement, and of trust or other estates the income of which is not distributed annually or regularly under the provisions of section 143.130, the sum of one thousand two hundred dollars together with such deductions as are allowed under section 143.160. A nonresident individual may receive the benefit of the exemption provided for in this section only by filing or causing to be filed with the director of revenue a true and accurate return of his total income, received from any sources, corporate or otherwise; in this state, in the manner prescribed by this chapter; and in case of his failure to file such return the director of revenue shall collect the tax on such income, and all property belonging to such nonresident individual shall be liable to distraint for the tax.

(R. S. Mo. 1939, § 11351, A. L. 1945, p. 1881, A. L. 1945, p. 1963, A. L. 1949, p. 611.)

Prior revisions: 1929, § 10122; 1919, §13113.

143.180. Credit for corporate income taxes paid this state—credit to stockholders of national banks.—For the purpose of this chapter, the tax on income included in

the return of any stockholder of any corporation, joint stock company and/or joint stock association, received or earned during the taxable period, shall be credited with the amount obtained by multiplying the rate of the Missouri state tax on corporate income by the amount or portion of such dividends, or net earnings of any corporation, joint stock company and/or joint stock association, upon which such corporation, joint stock company and/or joint stock association, paid income tax to the state of Missouri for its last preceding taxable period, provided, however, that stockholders of national banking associations shall be entitled to such credit computed as aforesaid but as if the national bank whose dividends are included in the stockholder's return was in fact a bank organized under the laws of this state and had paid income tax for which it would in such case have been liable for its last preceding taxable period. Whenever the withholding for, or payment of, at the source, any tax on income under any law of this state, be authorized by any law of this state, then a like credit shall be allowed to the extent of the amount so withheld or paid on account of such taxpayer claiming such credit.

(R. S. Mo. 1939, § 11350, A. L. 1947, V. II, p. 424, § 11350, A. L. 1957, p. 791).

Prior revisions: 1929, § 10121; 1919, § 13112.

For case notes, see Vol. III, R. S. Mo. 1949.

143.190. Deductions allowed corporate taxpayers.—1. For the purpose of ascertaining the gains derived or losses sustained from the sale or other distribution of property acquired before January 1, 1917, the fair market price or value of such property as of January 1, 1917, shall be the basis for determining the amount of such gain derived or loss sustained.

2. No deduction shall be allowed for any amount paid out for new buildings, permanent improvements or betterments made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

3. Losses in case of oil and gas wells shall include a reasonable allowance for actual reduction in flow and production, to be ascertained not by the flush flow, but by the settled productions for regular flow, and losses with respect to mines shall include a reasonable allowance for depletion thereof not to exceed the market value in the mine of the produce thereof which has been mined and sold during the year for which the return and computation are made; such reasonable allowance in the case of oil and gas wells and mines shall be under rules and regulations prescribed by the director of revenue; provided, that when the allowance authorized with respect to either shall equal the capital originally invested, or in the case of purchase made prior to January 1, 1917, the fair market value as of that date, no further allowance shall be made.

4. Mutual fire and mutual employers' liability and mutual workmen's compensation and mutual casualty insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, and shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are returned by the companies for purposes other than the payment of losses and expenses and reinsurance reserves.

5. Mutual marine insurance companies shall include in their return of gross income premiums collected and received by them less amounts paid for reinsurance, but

shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid on such amounts between the ascertainment thereof and the payment thereof, and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year.

6. In the case of assessment insurance companies, whether domestic or foreign, the actual deposit of sums with state or territorial officers, pursuant to law, as additions to guaranty or reserve funds, shall be treated as being payments required by law in reserve funds.

(R. S. Mo. 1939, § 11352, A. L. 1945, p. 1881.)

Prior revisions: 1929, § 10123; 1919, §13114.

143.200. Director to prescribe rules and regulations.—The director of revenue may prescribe reasonable rules and regulations for administration of the provisions of the laws relating to the levy, assessment, collection and payment of taxes based on incomes. Such rules and regulations shall follow as nearly as practicable the rules and regulations prescribed by the United States government on income tax assessments and collections.

(R. S. Mo. 1939, §11345, A. L. 1945, p. 1881, A. L. 1947, V. I, p. 327.)

Prior revisions: 1929, § 10117; 1919, § 13108.

143.210. Director may establish branch offices.—For the purpose of administration of this chapter the director of revenue may establish temporary or permanent branch of-

fices in such localities of the state as the business may warrant, for the purposes of making forms available, taking returns thereon, or such other business occasioned by this chapter as the director of revenue may specify. The director of revenue is also authorized to distribute income tax forms by mail. Returns by persons residing within this state and who are under a duty to file a return, and returns by persons residing without the state and deriving income from sources within the state and within its jurisdiction may be made to any of such branch offices and during such times as the director of revenue may establish such branch offices for receiving income tax returns, or to the main office of the state department of revenue; provided, however, that it shall be the duty of any individual, association, joint stock company, syndicate, copartnership, corporation, receiver, trustee, conservator, or other officer appointed by any state or federal court, or any other person or organization from whom any tax under this chapter shall be due, or who shall be required by this chapter to file a return, to apply to the director of revenue, or to one of such branch offices as may be established, for such form or forms as may be required and to make return thereon within the time or times prescribed by law.

(R. S. Mo. 1939, § 11353, A. L. 1945, p. 1881.)

Prior revisions: 1929, §10124; 1919, § 13115.

143.220. Short form tax return.—1. Any individual having an income of ten thousand dollars or less, received entirely from salaries, and subject to federal withholding tax, may file his return on an abbreviated tax return supplied by the director of revenue upon request, said form being designed as follows:

(1) The individual's name and address;

(2) Name of wife and all other dependents and their relationship;

(3) The amount of wages received and the name and address of employer;

(4) Social Security number;

(5) Federal income tax actually paid during the year covered by the return;

(6) Personal exemption and deductions for dependents, as defined in section 143.170;

(7) A five per cent allowance in lieu of personal contributions, interest, taxes and other allowable deductions;

(8) Taxable net income subject to tax;

(9) Amount of tax to be determined from the short form tax table;

(10) Short form tax table:

Net Taxable	Amount of Tax
.01 to $ 200.00	$ 1.00
200.01 to 400.00	3.00
400.01 to 600.00	5.00
600.01 to 800.00	7.00
800.01 to 1000.00	9.00
1000.01 to 1200.00	11.50
1200.01 to 1400.00	14.50
1400.01 to 1600.00	17.50
1600.01 to 1800.00	20.50
1800.01 to 2000.00	23.50
2000.01 to 2200.00	27.00
2200.01 to 2400.00	31.00
2400.01 to 2600.00	35.00
2600.01 to 2800.00	39.00
2800.01 to 3000.00	43.00
3000.01 to 3200.00	47.50

Net Taxable			Amount of Tax
3200.01	to	3400.00	$ 52.50
3400.01	to	3600.00	57.50
3600.01	to	3800.00	62.50
3800.01	to	4000.00	67.50
4000.01	to	4200.00	72.50
4200.01	to	4400.00	77.50
4400.01	to	4600.00	82.50
4600.01	to	4800.00	87.50
4800.01	to	5000.00	92.50
5000.01	to	5200.00	98.00
5200.01	to	5400.00	104.00
5400.01	to	5600.00	110.00
5600.01	to	5800.00	116.00
5800.01	to	6000.00	122.00
6000.01	to	6200.00	128.00
6200.01	to	6400.00	134.00
6400.01	to	6600.00	140.00
6600.01	to	6800.00	146.00
6800.01	to	7000.00	152.00
7000.01	to	7200.00	158.50
7200.01	to	7400.00	165.50
7400.01	to	7600.00	172.50
7600.01	to	7800.00	179.50
7800.01	to	8000.00	186.50
8000.01	to	8200.00	193.50
8200.01	to	8400.00	200.50
8400.01	to	8600.00	207.50
8600.01	to	8800.00	214.50
8800.01	to	9000.00	221.50
9000.01	to	9200.00	229.00
9200.01	to	9400.00	237.00
9400.01	to	9600.00	245.00
9600.01	to	9800.00	253.00
9800.01	to	10000.00	261.00

2. The director of revenue shall also be required to provide a combination income tax form containing the long and short form for those individuals who have income which could not be reported on the abbreviated form but who still wish to file using the short form method of computation.

(L. 1947 V. I p. 540 § 11343a, A. L. 1959 H. B. 392)

143.230. Tax returns, when filed—assessments—fiscal year reports, change of basis.—1. Everyone who is subject to a tax based on income shall on the second day of January of each year or as soon thereafter as practicable, apply to the director of revenue for a proper blank on which to make a return of income for the preceding year. The return shall be filed with the director of revenue on or before the fifteenth day of April next following except in cases where return is made by a person or a corporation on a fiscal year basis and then the blanks shall be obtained and the return filed with the director of revenue on or before one hundred and five days after the end of the fiscal year.

2. The director of revenue shall make assessments on incomes of the preceding calendar year or the preceding fiscal year as the case may be. In case any taxpayer makes no return or makes an insufficient return, the director of revenue shall make the assessment or additional assessment of such incomes.

3. All corporations which now make return upon a fiscal year basis may continue to do so. Any other corporation or any person who may hereafter be permitted to make return upon a fiscal year basis shall, before the expiration of the calendar year in which the notice is given, notify the director of revenue of his or its election to make return upon a fiscal year basis and the director of revenue shall thereupon issue a certificate to the person or cor-

poration authorizing him or it to make return on a fiscal year basis.

4. Any person or corporation desiring to change from a fiscal year to a calendar year basis may do so by notifying the director of revenue in writing of his or its election to do so and thereupon the director of revenue shall issue to such person or corporation his certificate authorizing the change from a fiscal year to a calendar year basis.

5. Any person or corporation desiring to change accounting method from accrual to cash basis or from cash to accrual basis, may make application to the director of revenue including such pertinent information as may be required by the director. If the director of revenue is satisfied that the desired change in accounting method is requested in good faith and may be accomplished without unfair tax advantage to the applicant, he shall issue to the applicant a certificate authorizing the change and specifying the date thereof.

6. Whenever the director of revenue makes an assessment on income for a calendar year against any taxpayer who has failed to file a return, or an additional assessment against any taxpayer whose return is insufficient, or whenever the director of revenue makes an assessment on account of income for any fiscal year against any taxpayer who has failed to file a return, or an additional assessment against any taxpayer whose return is insufficient, then in every such case the director of revenue shall send to the taxpayer, by registered mail, notice of the assessment or additional assessment, but the failure of the taxpayer to receive notice duly mailed does not in any way invalidate or affect the assessment or additional assessment.

(RSMo 1939 § 11354, A. L. 1945 p. 1881, L. 1947 V. I p. 527, A. L. 1955 p. 830, A. L. 1959 H. B. 391)

Prior revisions: 1929 § 10125; 1919 § 13116

143.240. Estimate of income, when made—examination of books—credit slip—additional assessment—administration of oaths.—In case any taxpayer shall fail to make return as required by law, the director of revenue shall have authority to estimate the amount of such taxpayer's income, from such sources as he may be able to obtain including the business, records and books of any taxpayer, which business, records and books, the director of revenue is hereby given the right to examine during the usual business hours at any time within four years after the return of such taxpayer is required by law to be filed, and the director of revenue shall thereupon make the assessment including all penalties and interest provided. At any time within four years after any return shall have been filed the director of revenue shall have the right to examine, during the usual business hours, the business, records and books of any individual, corporation, joint stock company, joint stock association or partnership, and to make refund or issue a credit to any taxpayer at the taxpayer's election, if more tax has been paid than legally due, which credit shall be taken as deduction of the succeeding tax or taxes based on incomes to the extent of such credit. The director of revenue may determine any deficiency not returned by the taxpayer, and shall make an additional assessment including all penalties and interest provided; provided in case of overpayment of tax, the taxpayer shall not be precluded from any other remedy now or hereafter available. The director of revenue and his deputies shall have power to take and administer all oaths specifically required under any provisions relating to taxes based on incomes. Wherever the term **"director"** or **"director of revenue"** is used pertaining to the assessment, levy, collection or payment of taxes based on incomes it shall mean director of revenue or his deputies duly authorized by him. All claims for adjustment or refund shall be made in such form as the director of revenue by regulation shall prescribe.

(RSMo 1939 § 11363, A. L. 1945 p. 1881, A. L. 1949 p. 611, A. L. 1951 p. 864)

Prior revisions: 1929 § 10132; 1919 § 13123

For case notes, see Vol. III RSMo 1949

143.250. Abatement or correction of assessment—petition—hearing.—1. Any person against whom an assessment or additional assessment of income is made by the director of revenue, under the provisions of this chapter, may petition for abatement or correction thereof.

2. A petition for abatement, correction or reassessment shall be filed with the director of revenue within thirty days after the day of service or mailing by the director of revenue of the notice of such assessment or additional assessment. Such petition shall be sworn to by the taxpayer or someone who has actual knowledge of the facts, and the petition shall show the net income of the taxpayer, and shall show all matters of income, deduction and exemption as defined by law and shall set forth specifically and in detail the grounds upon which it is claimed that the assessment or additional assessment is erroneous.

3. After such petition has been filed with him the director of revenue shall fix the date upon which a hearing upon the petition shall be held and shall give notice thereof. Such hearing shall be held not less than fifteen days after filing of the petition at the time and place designated by the director of revenue in such notice to the person, but the director shall have power to continue the hearing from time to time as may be necessary.

(RSMo 1939 § 11366, A. L. 1945 p. 1881)

Prior revisions: 1929 § 10135; 1919 § 13126

For case notes, see Vol. III RSMo 1949

143.260. Appeals to state tax commission.—1. Any taxpayer under the terms of this chapter shall have the right to appeal to the state tax commission from any final decision by the director of revenue regarding abatements, corrections or reassessments.

2. In case the taxpayer shall not file with the director of revenue a petition for abatement, correction or reassessment, in accordance with the provisions of this chapter, the abatement, correction or reassessment, shall be considered a final decision thirty days after the day of service upon or mailing to the taxpayer of the notice of the amount of such abatement, correction or additional reassessment by the director of revenue. If a petition for abatement, correction or reassessment shall be filed with the director of revenue, as provided in section 143.250, the determination of the amount of the tax shall be a final decision by the director of revenue from the time of service upon or mailing to the taxpayer by the director of revenue notice of his decision upon such petition for abatement, correction or reassessment.

3. The right of the taxpayer to appeal to the state tax commission shall not be dependent upon his filing with the director of revenue any petition for abatement, correction or reassessment. The proceedings for appeals to the state tax commission shall be as provided by law for appeals to said board.

(RSMo 1939 § 11366, A. L. 1945 p. 1881)

Prior revisions: 1929 § 10135; 1919 § 13126.

143.270. Officers not to divulge information—exceptions—penalty.—1. It shall be unlawful for any person, persons or officers to divulge, give out or impart to any other person, or persons, any information relative to, or the contents of any income tax return filed under this chapter, or to permit any other person or persons not connected with

his office to see, inspect or examine the same; but it shall be lawful for any person or officer to use any income tax return filed under this chapter for the purpose of assessing intangible personal property.

2. It shall be unlawful for the director of revenue, or his deputy, agent or clerk in any way to permit the inspection of any such return or to permit the use of the same in any way for the purpose of assessing property tax or to permit the use of the same in any way in making up any property assessment roll and any person violating the provisions of this section shall be deemed guilty of a felony and upon conviction thereof shall be fined a sum of not less than one hundred dollars and not more than one thousand dollars or by imprisonment in the penitentiary for a term of not less than two years and not more than five years, or both such fine and imprisonment as the court may deem proper; and any officer convicted for the violation of this section, the judgment of conviction shall be construed and held to be a forfeiture of the office held by such convicted person; provided, however, that this section shall not prohibit the director of revenue nor any agent, clerk or inspector from proceeding in the discharge of their official duties in the administration of the income tax laws, nor from giving evidence in any court, or before the state tax commission, in any proceeding brought to collect any tax due hereunder or to question or determine the validity or correctness of any assessment by the director of revenue under the terms of this chapter, or to punish any person for making false or fraudulent returns; provided further, that this section shall not prohibit the director of revenue nor any agent, clerk or inspector employed by his office from comparing any such return as provided for in this chapter with other returns required by law to be filed by the director of revenue, except in regard to returns or information bearing upon the assessment of property tax or determination of the amount of

property assessment of any person or corporation or relating in any way to making up any property assessment rolls, for the purpose of determinination by the director of revenue whether to investigate delinquencies or deficiencies in the returns required by tax laws other than for property assessment taxes. But no return regarding income tax, as provided for in this chapter, may otherwise be used as evidence in support of any charge of inaccuracy, delinquency or misconduct in the filing of tax returns required by law to be filed with the director of revenue other than returns dealing with income tax as provided in this chapter.

(RSMo. 1939 § 11375, A. L. 1945 p. 1881)

Prior revisions 1929 § 10144; 1919 § 13135

For case notes, see Vol. III RSMo 1949

143.280. Tax delinquent, when—notice of amount of tax.—1. All taxes assessed on account of incomes which are required by law to be returned to the director of revenue on or before the fifteenth day of April become delinquent on the sixteenth day of April.

2. In all other cases in which an income tax return may by law be filed with the director of revenue later than the fifteenth day of April same becomes delinquent one hundred and five days after the end of the fiscal year covered by the return.

(RSMo 1939 § 11367, A. L. 1945 p 1881, A. L. 1949 p. 611, A. L. 1955 p. 830)

Prior revisions: 1929 § 10136; 1919 § 13127

143.290. Action to collect tax.—At the expiration of thirty days after any delinquency, the director of revenue shall certify the name of any individual, association, joint

stock company, syndicate, co-partnership, corporation, receiver, trustee, conservators, or other officer appointed by any state or federal court, or any other person or organization from whom any tax under this chapter shall be due, to the attorney general, and suit shall be instituted in any court of competent jurisdiction by the attorney general, or by the prosecuting attorney of the county at the direction of the attorney general, in the name of the state, to recover such tax and enforce the lien therefor, and service may be had on both residents and nonresidents in the same manner as provided by law in civil actions.

(RSMo 1939 § 11367, A. L. 1945 p. 1881, A. L. 1949 p. 611)

Prior revisions: 1929 § 10136; 1919 § 13127

For case notes, see Vol. III RSMo 1949

143.300. Additional time for making return—interest on taxes during extension.—In case of neglect occasioned by the sickness or absence of an individual or of an officer of any corporation, joint stock company or association required to make and file a return, or for other sufficient reason, the director of revenue may allow such further time for making and filing the return as he deems necessary, not to exceed ninety days. In the case of a corporation having qualified for an extension of time, a tentative return and tax payment may be made, based upon the previous year's return, the filing of which would automatically extend the filing date of the corporation return for a total of one hundred eighty days beyond the statutory due date. And in the case where any person is engaged in military or naval service or is outside the continental United States, the director of revenue may allow not more than one year after discharge or return to this country as additional time for making and filing a return. When an extension of time is allowed no penalty accrues

but interest at the rate of six per cent per annum shall be charged and corrected from the due date of the return; except that no interest shall be charged when an extension is granted to a person engaged in military or naval service.

(RSMo 1939 § 11369, A. L. 1945 p. 1881, A. L. 1949 p. 611, A. L. 1955 p. 830, A. L. 1959 H. B. 515)

Prior revisions: 1929 § 10138; 1919 § 13129

143.310. Tax returns available to federal authorities.—Upon the written request of either the United States commissioner of internal revenue at Washington, D. C., or the United States collector of revenue at St. Louis, Missouri, or the United States collector of revenue at Kansas City, Missouri, the director of revenue of Missouri shall make accessible to such officers or their authorized representatives, any Missouri state individual or corporation income tax return which is specifically designated in the written request. Such records shall be made accessible only in the department of revenue in Jefferson City, Missouri.

(L. 1947 V. I p. 543 § 11359)

143.320. Income tax returns to be filed—may be destroyed after four years.—The director of revenue shall keep such returns on file in his custody for a period of four years after the income tax becomes due. Income tax returns in the custody of the director of revenue may at the end of four years be destroyed by him; but no return shall be destroyed by the director of revenue or by any other office of this state until the tax has been paid.

(RSMo 1939 § 11376, A. L. 1945 p. 1881, A. L. 1955 p. 830)

Prior revisions: 1929 § 10145; 1919 § 13136

143.330. Interest and penalties.—1. If any taxpayer, without intent to evade the income tax, shall fail to file a return or pay the tax within the time prescribed by law, there shall be added to the tax five per cent if the failure is for not more than thirty days, and with an additional five per cent for each additional thirty days or fraction thereof during which such failure continues, at the discretion of the director of revenue, not to exceed twenty-five per cent in the aggregate, but such additional amount shall in no case be less than one dollar. No penalty shall apply to any extension of time authorized by the director of revenue.

2. Any unpaid tax shall bear interest at the rate of six per cent per annum from the date it was due.

3. If any part of any deficiency is due to fraud with intent to evade tax, then fifty per cent of the total amount of the deficiency shall be assessed, collected and paid in lieu of all penalties provided in subsection 1.

4. Any individual or any officer of a corporation, joint stock company or joint stock association required under this chapter to pay a tax, make a return, keep any records, or supply any information for the purpose of the computation, assessment or collection of any tax imposed by this chapter who willfully fails to pay such tax, make such return, keep such records, or supply such information at the time or times required by law, or attempts in any manner to defeat or evade the tax, or willfully makes a false return, in addition to all other penalties provided in this chapter, shall be guilty of a misdemeanor and, upon conviction thereof, be fined not more than one thousand dollars, or imprisoned for not more than one year or both, at the discretion of the court, together with the costs of prosecution.

5. All prosecutions for willfully filing a false return or for willfully failing to file a return when one is required

shall be brought within one year after the discovery by the director of revenue or his agents of the falsity of such return or the existence of income which should require a return; provided that no such a prosecution shall be brought after the expiration of four years from the date of the filing such false return or the date when, under the law, a return should have been filed and the taxpayer willfully failed to file same.

(L. 1949 p. 611 § 11354a, A. L. 1951 p. 864, A. L. 1957 p. 801)

143.340. Governor to request information concerning federal incomes.—It shall be the duty of the governor to request such information concerning the payment of federal income taxes by citizens of this state as the federal authorities may be willing to divulge, and to report any information obtained to the director of revenue.

(RSMo 1939 § 11374, A. L. 1945, p. 1881)

Prior revisions: 1929 § 10143; 1919 § 13134.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962.

No. 905

EDWARD ABERNATHY et al.,
Appellants,

vs.

MILTON CARPENTER, Director of Revenue for the State of Missouri,
Appellee.

ON APPEAL FROM A DECISION OF A THREE JUDGE COURT OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI, CENTRAL DIVISION.

SEPARATE MOTION TO AFFIRM OR ALTERNATIVE MOTION TO DISMISS OF APPELLEE, MILTON CARPENTER, DIRECTOR OF REVENUE FOR THE STATE OF MISSOURI.

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ON APPEAL FROM A DECISION OF A THREE JUDGE COURT OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI, CENTRAL DIVISION.

SEPARATE MOTION TO AFFIRM OR ALTERNATIVE MOTION TO DISMISS OF APPELLEE, MILTON CARPENTER, DIRECTOR OF REVENUE FOR THE STATE OF MISSOURI.

Milton Carpenter, Appellee, in the above entitled cause, pursuant to Rule 16 of the revised rules of the Supreme Court of the United States, moves that the order of the three judge court of the United States District Court

for the Western District of Missouri, Central Division, dismissing this proceeding at appellants' costs, be affirmed, or, in the alternative, that the appeal herein be dismissed, on the following grounds:

1. The Court below properly dismissed this proceeding.

A. The requisite jurisdictional amount is not present in this case.

B. This cause does not fall within the purview of 28 USCA §1343(3).

C. The appellants have a plain, speedy and efficient remedy at law within the meaning of 28 USCA §1341.

D. The Motion to Dismiss was sustained as a proper exercise of the Court's discretion.

STATEMENT.

Appellants are a large number of Illinois residents who brought suit against the Director of Revenue for the State of Missouri pursuant to 28 USCA §2281 and §2284. The purpose of this suit was to enjoin the appellee, Director of Revenue, from collecting, or attempting to collect, certain Missouri State Income Taxes from appellants, and from assessing or attempting to assess civil and criminal penalties for failure to file Missouri State Income Tax returns.

Section 143.170, RSMo 1959, provides in part that nonresidents earning taxable income in Missouri can receive the benefits of their personal exemptions only by filing a timely return with the Director of Revenue of Missouri. It was stipulated by the parties to this proceeding that

the appellants failed to file returns and, as a result, that they had assessments for income taxes made against them allowing one exemption for each appellant whether he may, or may not, have been entitled to more.

It is the allegation of appellants that the Missouri Income Tax Statute (143.170, *supra*) violates the privileges and immunities clause of Section 2, Article IV of the United States Constitution and also the due process and equal protection clauses of the 14th Amendment of the United States Constitution.

The three judge court, after a hearing held August 20, 1962, dismissed this proceeding for want of federal jurisdiction in an opinion dated September 14, 1962. This opinion is reported in 208 Fed. Supp. 793. Appellants have appealed to this Court on the authority of 28 USCA §1253 which provides that appeals from the findings of a three judge court shall be to the United States Supreme Court.

ARGUMENT.

The Court Below Properly Dismissed This Proceeding.

A. The requisite jurisdictional amount is not present.

One of the alleged grounds of Federal jurisdiction contended by the appellant is under the authority of 28 USCA §1331 in that there is a constitutional question involved under the pleadings in this case. However, there is no showing that the requisite jurisdictional amount of $10,000 is in controversy. It is apparent that none of the appellants individually can attain the requisite jurisdictional amount.

As noted by the court below, 208 Fed. Supp. 793, l.c. 796-797:

"In any individual plaintiff's situation in the case at bar it can be demonstrated that the sum any plaintiff would be entitled to in interest would be so small to be inconsequential. Take for example a plaintiff having a spouse and ten dependents. Such a person would be entitled to $6,400 in exemptions. Assuming that such person was in the highest income tax bracket his rate of income tax would be 4 per cent, under § 143.010, RSMo (1959), V.A.M.S. If these exemptions were denied the taxpayer, he would be subjected an additional tax of $256.00. At a rate of interest of 6 per cent on this additional tax, the state would only be assessed a sum of $15.36 per annum in the event that the taxpayer's protest procedure was successful and the statute in question declared unconstitutional. * * *"

There is no contention made by appellants that any individual taxpayer has an amount in controversy in excess of $10,000.

It is also apparent that appellants cannot aggregate their claims to arrive at the requisite jurisdictional amount. Rule 23 of the Rules of Federal Procedure deals with class actions. This action falls within the category of "a spurious class action" in which the claims cannot be aggregated. *Moore on Federal Practice*, Vol. III, Sec. 23.13, page 3482. See also *Tittle et al.* v. *General Motors Corporation*, 80 Fed. Supp. 333, l.c. 334; *Greater Hartford Free Bridge Association* v. *Greater Hartford Bridge Authority*, 172 Fed. Supp. 244, and *Sesler* v. *Union Local 901*, 186 F.2d 403. *Annotation 30 ALR2d* 602, l.c. 658. In the case of *Travis v. Yale & Towne Mfg. Co.*, (1926) 252 U.S. 60, 64 S. Ct. 228, cited by appellants (page 8 App's Brief) the requisite jurisdictional amount (then $3,000) was expressly found to be present. 252 U.S. 60, l.c. 74, 75.

We submit that this cause was properly dismissed because the amount in controversy is not sufficient to invoke Federal jurisdiction.

B. This cause does not fall within the purview of 28 USCA §1343(3).

The appellants in this proceeding further allege there is Federal jurisdiction under the authority of 28 USCA § 1343(3), the Civil Rights Act. It is true that the requisite jurisdictional amount is not necessary under a proceeding falling within the purview of this act. *Hague* v. *C.I.O.*, 307 U.S. 496, 59 S. Ct. 954, 83 L. Ed. 1028. However, it is submitted by the appellee that the Court below properly ruled that this proceeding involved property rights as opposed to "personal liberty" and that therefore § 1343(3) is inapplicable to this proceeding. *Hague* v. *C.I.O., supra.*

Appellants rely on *Schlosser* v. *Welsh*, 5 Fed. Supp. 993. This case was decided by the District Court of South Dakota in the year 1934. The case of *Hague* v. *C.I.O., supra*, was decided in 1939 and the conflict, if any, between the cases was therein resolved. The District Court of Maryland in the case of *Reiling* v. *Lacy*, 93 Fed. Supp. 462, considered this point, l.c. 466, 467 and stated:

> "But the prayer for alternative relief is essentially a taxpayer's suit to protect the plaintiff from being required to pay allegedly unlawful taxes and, therefore, of course, relating only to his property and not to a personal constitutional right. Federal jurisdiction of a suit of this nature falls under subsection (1) (a) of section 41 of Title 28 which requires a showing that the amount in controversy exceeds $3,000. * * *"

See also *Holt* v. *Indiana Mfg. Co.*, 176 U.S. 68, 72, 20 S. Ct. 272, 273, 44 L. Ed. 374. Appellees therefore submit

that this cause does not fall within the purview of 28 USCA § 1343(3), and therefore, the requisite jurisdictional amount must be present in order to invoke federal legislation.

C. Appellants have a plain, speedy and efficient remedy at law within the meaning of 28 USCA §1341.

This cause was properly dismissed by the Court below because appellees have a plain, speedy and efficient remedy within the meaning of Title 28, USCA § 1341 which provides:

> "The District Courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under state law where a plain, speedy and efficient remedy may be had in the courts of such state."

All the appellants herein failed to file Missouri State income tax returns as required by law. Section 143.010, RSMo 1959. The Director of Revenue made an assessment and notified the taxpayers of the assessment under the authority of Section 143.230, RSMo 1959. Under Missouri statutes an aggrieved taxpayer may petition for abatement, correction or reassessment. Section 143.250, RSMo 1959. The taxpayer may further appeal an adverse decision of the Director of Revenue to the State Tax Commission, whether he petitions for an abatement, correction or reassessment or not. Section 143.260, RSMo 1959. The taxpayer may also appeal the judgment of the Tax Commission to the Courts of the State of Missouri. Sections 148.070, 536.100 to 536.140, RSMo 1959. The appellants in this case did not petition for abatement, correction or reassessment but allowed the period for administrative review to lapse and thereby become final.

Under the stipulated facts in this proceeding, upon the failure of these appellants to file their tax returns, the

Director of Revenue made an assessment allowing one exemption to each taxpayer. Paragraph 7, Stipulation of Facts.

It is not affirmatively shown by the appellants that the Director of Revenue does not use the same yardstick on residents and non-residents in making such an assessment. On the contrary it is affirmatively shown that the Director of Revenue allowed these appellants one exemption which he is not required to do under the statute here in controversy, Section 143.170, RSMo 1959. The taxpayer, be he resident or non-resident, cannot collaterally attack this arbitrary assessment once the period for administrative review has passed.

In the recently decided case of *State* v. *Kosovitz*, Mo. S. Ct., 342 S.W.2d 828 (1961), the reassessment for income tax was attacked in a court proceeding as "illegal and void" after the period for administrative review had passed. This reassessment had allegedly failed to allow certain deductions to which the resident taxpayer-plaintiff was entitled. The Missouri Supreme Court held that the taxpayer had failed to exhaust his administrative remedies and the reassessment was therefore not subject to collateral attack. The Court specifically noted, l.c. 832:

> "* * * If he (the Director of Revenue) erroneously disallowed deductions, a matter which we do not rule, his actions were merely erroneous, not jurisdictional, and they were not void." (Parenthetical material added)

So also in the case now before this Court, the appellants allowed their time for administrative review to elapse and under the directive announced in the *Kosovitz* case, *supra*, they cannot now collaterally attack this assessment. See also the case of *Bucklin Coal Mining Company*

v. *Unemployment Compensation Commission*, 53 Fed. Supp. 434 (D.C. W.D. Mo., 1943), noted by the Court below.

The fact these appellants did not avail themselves of the administrative review available to them under the Missouri statutes, *supra*, does not entitle them to now assert there is no plain, speedy, efficient remedy within the meaning of 28 USCA 1341. In *Reiling* v. *Lacy*, 93 Fed. Supp. 462, 467[6], the District Court of Maryland stated:

> "It is conceded in the present case that, as plaintiff claims, the procedure afforded by Maryland law for contesting the validity of a tax is now unavailable to him because more than three years have elapsed since the date on which his income tax returns for the years here in question should have been filed. But plaintiff goes further and claims that, although the Maryland income tax law provides for notice and right of appeal to the State Tax Commission, he has not been given any right of appeal or any other reasonable opportunity to be heard. However, this is not in fact true. *The plaintiff did have both a right of review and a right of appeal to the State tribunals but failed to take advantage of these rights.*" (Emphasis supplied).

Appellee therefore submits that the appellants did have a plain, speedy and efficient remedy available to them under Missouri statutes and cannot now complain because they failed to take advantage of the review provided by Missouri statutes.

D. The Motion to Dismiss was sustained as a proper exercise of the Court's discretion.

It is further submitted that the Motion to Dismiss was properly sustained by the Court below in the proper exercise of the Court's discretion in this declaratory judgment action.

In the case of *Great Lakes Dredge and Dock Co.* v. *Huffman*, 319 U.S. 293, 63 S. Ct. 1070, 87 L. Ed. 1407, the petitioners brought a declaratory judgment action in the Federal Court, seeking to declare the Louisiana Unemployment Compensation Law unconstitutional and void. The District Court found the statute constitutional and dismissed the complaint. The Court of Appeals affirmed the findings of the District Court. The United States Supreme Court held that the judgment of dismissal should be affirmed, but "solely on the ground that, in the proper exercise of the Court's discretion, relief by way of declaratory judgment should have been denied without consideration of the merits", l.c. 301, 302. The United States Supreme Court noted at 300, 301:

> "The considerations which persuaded federal courts of equity not to grant relief against an allegedly unlawful state tax, and which led to the enactment of the Act of August 21, 1937, are persuasive that relief by way of declaratory judgment may likewise be withheld in the sound discretion of the court. With due regard for these considerations, it is the court's duty to withhold such relief when, as in the present case, it appears that the state legislature has provided that on payment of any challenged tax to the appropriate state officer, the taxpayer may maintain a suit to recover it back. In such a suit he may assert his federal rights and secure a review of them by this Court. This affords an adequate remedy to the taxpayer, and at the same time leaves undisturbed the state's administration of its taxes."

In the facts before this Court, the appellants were afforded an opportunity to contest the assessment without the payment of the challenged taxes, *Abernathy* v. *Carpenter*, 208 Fed. Supp. 793, 797. By means of the review procedures available they could also, as in the *Great Lakes Dredge & Dock Company* case, *supra*, have been afforded

a review by the United States Supreme Court. It is also to be noted that the required jurisdictional amount was not in dispute in the *Great Lakes Dredge & Dock Company* case, *supra*.

The above reasoning was followed in the case of *Bucklin Coal Mining Company* v. *Unemployment Compensation Commission, supra*. See also *Reiling* v. *Lacy, supra*.

It is also worthy of consideration that the Missouri Supreme Court has never had an opportunity to pass on the import of Section 143.170, RSMo 1959. In the case relied on by appellants, *Stouffer* v. *Crawford*, Mo. S. Ct., 248 SW 581 (1923), the constitutionality of the Missouri income tax statute was attacked by a resident taxpayer. The Missouri Supreme Curt in its opinion noted that the plaintiff in that case, being a resident, was not in a position to challenge the non-resident penalty provision. Hence, anything stated by the court with reference to the non-resident penalty provision was dicta. Further, under Section 527.020, RSMo 1959, the appellants would clearly have the right to bring a declaratory judgment action in the state's courts to have the validity of the statute in question determined. This they have not chosen to do.

CONCLUSION.

Appellee, Milton Carpenter, submits that the decision of the three judge Court of the Western District of Missouri, Central Division, dismissing these proceedings should be affirmed in that the required jurisdictional amount is not present; these proceedings did not properly come within the purview of 28 USCA §1343(3); appellants have a plain, speedy and efficient remedy in the Missouri courts; and that the dismissal of these proceedings was a

proper exercise of the Court's discretion. Therefore, appellee prays that the judgment of the lower Court be affirmed, or in the alternative, that appellee's motion to dismiss the appeal be sustained.

Respectfully submitted,

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PROOF OF SERVICE.

I, Albert J. Stephan, Jr., Attorney for Appellee, Milton Carpenter, Director of Revenue for the State of Missouri, appellee herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that I have served a copy of the foregoing by depositing two copies in the United States Mail, with regular postage prepaid, in an envelope addressed to Stanford S. Meyer, 4715 West Main Street, Belleville, Illinois, Attorney for Appellants, on the 4 day of April, 1963.

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